IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 287 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
VIJAYKUMAR TRIBHOVANDAS PANCHAL & ANR

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Appearance :
MR IM PANDYA APP for Appellant

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 02/04/2007

ORAL JUDGMENT :(Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 This Criminal Appeal is preferred by the State under Section 378 of the Code of Criminal Procedure against the judgment and order delivered by learned Additional Sessions Judge, Second Fast Track Court, Panchmahal at Godhra, on 31st of August, 2004, in Sessions Case No. 115 of 2003, whereby both the respondents being accused of said Sessions Case came to be acquitted by the Trial Court for the offences punishable under Sections 366, 498, 497, 494 and 114 of the Indian Penal Code.

2 Learned APP Mr. I.M. Pandya for the State was heard at length at this stage and we have called for Record and Proceedings of the said Sessions Case from the Trial Court which is available with us.

3 As per the brief facts of the case, the complainant Subhashchand Prabhatchand Barot, filed one criminal case (private complaint) in the court of Judicial Magistrate, First Class, at Kalol against both the respondents for the above said offences on 28th of November, 2000. It was alleged in the said complaint that respondent No.2 Hansaben had married with the complainant before 20 years of filing of the complaint and had two issues by the said wedlock. Accused No.1 Vijaykumar Tribhovandas Panchal was residing at nearby village

from the village of in-laws of the complainant. It was alleged that accused No.1 Vijaykumar Tribhovandas Panchal was in illicit relationship with accused No.2 Hansaben, wife of the complainant. It was alleged that on account of that, there were skirmishes and disputes between the complainant and accused No.2 Hansaben. Earlier in Navaratri, his wife was taken by her in-laws and the complainant had to file one private complaint before the court and thereafter only accused No.2 Hansaben resumed marital home and started residing with the complainant. On 26th of November, 2000 when complainant returned from his job to his house, he came to know that accused No.1 had seduced accused No.2 with intention to have extra-marital relationship between two. It was alleged that both the accused were in illicit relationship illegally. It was alleged that when accused No.1 came to village Boru where complainant and accused No.2 were residing, accused No.1 misrepresented before neighbouring persons that accused No.1 happened to be cousin of the accused No.2 and accused No.1 was sent to bring accused No. 2 to Gajipura, village where in-laws of the complainant were residing. It was alleged that in the above pretext, accused No.2 was seduced and abducted the accused No.2 and both were enjoying extra-marital relationship. Learned JMFC, Kalol, on the same day, directed the concerned police station to investigate the complaint as per Section 156 (3) of the Code of Criminal Procedure and

in pursuance of the said order, a charge sheet came to be filed against both the accused in the Court of learned Judicial Magistrate, First Class and thereafter case was committed to the Court of Sessions.

4 Learned Additional Sessions Judge and Second Fast Track Court, Panchmahal at Godhra, framed charge against both the accused for the above said offences vide Exhibit-2 on 20th of July, 2004 and vide Exhibits 3 and 4 both the accused pleaded not guilty and, hence, the prosecution tendered evidence to prove its case.

5 In oral evidence, PW-1 Subhashchandra Prabhatchandra Barot – complainant is examined at Exhibit -6; brother of the complainant PW-2 Promodbhai Prabhatsinh is examined at Exhibit-8 and last witness PW-3 Jasvantsinh Aabhsinh Bhuriya is examined at Exh.9 and he was the Investigating Officer of the said `M' Case No. 51 of 2000 which was registered by concerned PSO at Kalol Police Station. This witness after investigating the complaint, submitted a charge sheet.

6 Documentary evidence - complaint is produced at Exh.-7.

7 After the evidence was over, the Trial Court recorded statements of both the accused under Section 313 of the Code of Criminal

Procedure wherein though both the accused denied the allegations but the accused No.2 further explained that the marriage had taken place between the complainant and accused No.2. She further explained that divorce had taken place in respect of her marriage with the complainant and she was residing with her father along with her children when complaint came to be filed. After hearing both the sides, learned Trial Judge came to the conclusion that the prosecution failed to prove allegation of kidnapping and adultery as levelled against both the accused. In para-8 of the judgment, after recording the evidence of PW-1 and PW-2, the Trial Judge recorded the conclusion that the prosecution could not bring the guilt home as no evidence was on record to come to the conclusion that accused No.2 was abducted by accused No.1. The learned Trial Judge further observed that from the evidence of PW-1 and PW-2 it was clear that the conclusion could not be arrived at that accused No.1 and accused No.2 were committing an act of adultery and were residing together and enjoying extra-marital relationship. Though on record, a copy of an application under Section 125 of the Code of Criminal Procedure filed by accused No.2 before the Court of Judicial Magistrate, First Class, Baroda, in 1998 is produced on record but the same has not been exhibited. Likewise, a simple copy of the deed of divorce in terms of a compromise has also been produced on record, but the same has also not been exhibited on record. However,

after referring to the deposition of PW-2 , learned Judge observed that there was an application for maintenance filed by accused No.2 and a compromise of divorce was also executed. These were the reasons recorded by the Trial Court for acquitting both the accused.

8 We have heard learned APP Mr. I.M. Pandya in detail. We have gone through the Record and Proceedings of the Trial Court thoroughly and we have scanned the findings recorded. It is to be observed that in appeal against the orders of acquittal of the accused, the High Court has same powers which are vested in it in an appeal against an order of conviction and independent assessment of evidence is necessary in appeal against order of acquittal as well. However, as per the law settled, the order of acquittal shall not be lightly interfered with unless the reasons given by the Trial court for the acquittal are so perverse that the same would not stand to reason or if allowed to stand, would cause miscarriage of justice. The High Court in acquittal appeals also can come to independent finding from independent assessment of the evidence recorded during the trial, but to interfere the order of acquittal, the High Court must look into the reasons for the acquittal recorded by the Trail Court and record its own reasons for disagreeing with the reasons given by the Trial Court for acquittal.

9 We have carefully noted and appreciated the evidence recorded during trial in this case. PW-1 Subhashchandra Prabhatchandra Barot in his deposition stated that his marriage with accused No.2 took place before 18 years and had two issues out of the said wedlock. At the time of incident, he was driver of a vehicle and had come to his house after 5/6 days. When he came to his home, he found that his wife was not present in the house. He inquired about it. Even he inquired from his in-laws and came to know that accused No.1 Vijaykumar Tribhovandas Panchal had taken his wife. He further stated that his son Avinaskumar was aged at 10 years and his daughter Sheetal was aged about 12 years at the time of incident. He stated that he did not know that where both the accused were residing. He stated that both were staying in separate rooms. Thereafter he stated that both the accused were staying at Vadodara and he identified both the accused before the Court. In his examination-in-cross, he stated that he did not know that the case for getting maintenance was filed by accused No.2 being Case No. 9 of 1998, against him. He denied the fact that he attended this case and had executed a writing. He denied the suggestion that in the presence of panchas a divorce had taken place between him and the accused No.2. He admitted that complaint at Exhibit-7 was written by an advocate. He denied the suggestion that accused No.2 left the house because he was executing the cruelty against his wife. He

denied the fact of divorce. While PW-2 brother of the complainant Pramodbhai Prabhatsinh stated that complainant was his brother and the marriage between his brother and Hansaben had taken place before 18 to 20 years and had two issues out of this marriage. He further stated that police had obtained his signature in some writing, but he did not know what was the said writing. He stated that he did not know that where Hansaben had been residing but she was not residing with her brother. He stated his ignorance about the complaint filed by his brother in respect of the allegations levelled against both the accused. In his examination in cross he admitted that a divorce had taken place between his brother and Hansaben. He stated his ignorance about a case for maintenance filed by Hansaben against his brother. He further stated that after the divorce, husband or her two children had never been to village Boru at any time. While PW-3 Jasvantsinh Aabhsinh Bhuriya stated that as per the registration of crime i.e. `M' Case No. 51 of 2000 before Kalol Police Station, he was entrusted with the investigation and he recorded the statements of concerned witnesses and submitted a charge sheet. In cross-examination, he denied the allegation that even though there was no sufficient evidence against both the accused, he submitted charge sheet and he recorded the statements of witnesses arbitrarily and not according to the say of the witnesses.

10 This is all is the evidence of prosecution recorded during trial. While appreciating the evidence of PW-1 and PW-2, we also come to the conclusion that there is no iota of evidence to bring home the charge of Sections 494 and 366 of the Indian Penal Code against any of the accused. Going through the evidence of PW-1 it is apparently clear that he came to know about the abduction and the factum of adultery which goes to suggest that PW-1 had no personal knowledge about two serious allegations made against both the accused. Even if his examination-in-chief is taken as it is, not a single element is disclosed in respect of allegation of adultery or abduction by accused No.1 of accused No.2. When we appreciate the evidence of PW-2, in his examination-in-cross, to some extent, the defence theory is supported that the case came to be filed for the maintenance by accused No.2 against the complainant which resulted in compromise and ensued in divorce between the spouse. Taking into consideration the evidence of these witnesses, it appears that the trial court rightly concluded that the prosecution failed to establish beyond doubt the charges against both the accused under Sections 366, 494, 498 and 114 of the Indian Penal Code. On our careful scanning of the evidence and appreciating the evidence independently, we come to the same finding which is recorded by the Trial Court that there is no iota of evidence to connect any of the accused with the crime alleged. Ultimately, we do not find the judgment

and order impugned in this Appeal exceptional even at this stage and, hence, the following order.

" Leave to Appeal refused. Appeal stands dismissed."

(J. R. VORA, J.)

(B. N. MEHTA, J.)

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